

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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AFT MICHIGAN, AFT, AFL-CIO, ALPENA-MONTMORENCY-ALCONA ISD  
PARAPROFESSIONALS/TEACHERS, ARENAC  
EASTERN FEDERATION, BAY ARENAC  
SKILLS CENTER FEDERATION, BROWN  
CITY EMPLOYEES FEDERATION, BROWN  
CITY FEDERATION OF TEACHERS,  
CHEBOYGAN OTSEGO PRESQUE ISLE  
INTERMEDIATE PARAPROFESSIONALS  
AND BUS PERSONNEL, CHEBOYGAN  
OTSEGO PRESQUE ISLE ISD TEACHERS,  
CHEBOYGAN OTSEGO PRESQUE ISLE  
SUPPORT PERSONNEL, CHESANING UNION  
AUXILIARY SERVICE EMPLOYEES, CLARE-  
GLADWIN ISD FEDERATION, CRAWFORD  
AU SABLE BUS DRIVERS FEDERATION,  
CRAWFORD AU SABLE  
CUSTODIANS/SECRETARIAL FEDERATION,  
CRAWFORD AU SABLE SUPPORT STAFF  
FEDERATION, CRAWFORD AU SABLE  
FEDERATION OF TEACHERS, CRESTWOOD  
FEDERATION OF TEACHERS, DEARBORN  
FEDERATION OF SCHOOL EMPLOYEES,  
DEARBORN FEDERATION OF TEACHERS,  
DETROIT ASSOCIATION OF EDUCATIONAL  
OFFICE EMPLOYEES, DETROIT  
FEDERATION OF PARAPROFESSIONALS,  
DETROIT FEDERATION OF TEACHERS,  
EAST DETROIT FEDERATION OF  
TEACHERS, ECORSE FEDERATION OF  
TEACHERS, FAIRVIEW FEDERATION OF  
TEACHERS, GLEN LAKE FEDERATION OF  
TEACHERS, HALE FEDERATION OF  
TEACHERS, HAMTRAMCK FEDERATION OF  
TEACHERS, HEMLOCK FEDERATION OF  
TEACHERS, HEMLOCK AUXILIARY  
SERVICE EMPLOYEES, HENRY FORD  
COMMUNITY COLLEGE ADJUNCT  
FACULTY ORGANIZATION, HENRY FORD  
COMMUNITY COLLEGE FEDERATION OF

FOR PUBLICATION  
January 14, 2014

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TEACHERS, HIGHLAND PARK FEDERATION  
OF PARAPROFESSIONALS, HIGHLAND  
PARK FEDERATION OF TEACHERS, IMLAY  
CITY FEDERATION OF TEACHERS, INKSTER  
FEDERATION OF TEACHERS, IOSCO ISD  
INTERMEDIATE FEDERATION OF  
AUXILIARY EMPLOYEES, IOSCO  
FEDERATION OF TEACHERS, KINGSLEY  
FEDERATION OF TEACHERS, KIRTLAND  
COMMUNITY COLLEGE FEDERATION OF  
TEACHERS, LAKE CITY SUPPORT STAFF  
FEDERATION, LAKE CITY TEACHERS AND  
PARAPROFESSIONALS FEDERATION, LAKE  
SHORE FEDERATION OF EDUCATIONAL  
SECRETARIES, LAKE SHORE FEDERATION  
SUPPORT STAFF, LAKE SHORE  
FEDERATION OF TEACHERS, LAMPHERE  
FEDERATION OF PARAPROFESSIONALS,  
LAMPHERE FEDERATION OF TEACHERS,  
LANSING COMMUNITY COLLEGE  
ADMINISTRATIVE ASSOCIATION, LES  
CHENEAX FEDERATION OF SUPPORT  
STAFF, LES CHENEAX FEDERATION OF  
TEACHERS, MACOMB INTERMEDIATE  
FEDERATION OF PARAPROFESSIONALS,  
MACOMB INTERMEDIATE FEDERATION OF  
TEACHERS, MELVINDALE/NAP  
PARAPROFESSIONALS, MELVINDALE/NAP  
FEDERATION OF TEACHERS, MIDLAND  
FEDERATION OF PARAPROFESSIONALS,  
MIDLAND ISD FEDERATION OF  
PARAPROFESSIONALS, MIDLAND ISD  
FEDERATION OF TEACHERS, NORTHVILLE  
FEDERATION OF PARAPROFESSIONALS,  
ONAWAY FEDERATION OF SCHOOL  
RELATED PERSONNEL, ONAWAY  
FEDERATION OF TEACHERS, PLYMOUTH-  
CANTON COMMUNITY SCHOOLS  
SECRETARIAL UNIT, PLYMOUTH-CANTON  
FEDERATION OF PLANT ENGINEERS,  
ROMULUS FEDERATION OF  
PARAPROFESSIONALS, ROSEVILLE  
FEDERATION OF TEACHERS, RUDYARD  
FEDERATION OF AIDES, RUDYARD  
FEDERATION OF TEACHERS, SAGINAW ISD  
FEDERATION OF TEACHERS, TAWAS AREA

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FEDERATION OF TEACHERS, TAYLOR  
FEDERATION OF TEACHERS, UTICA  
FEDERATION OF TEACHERS, VAN DYKE  
EDUCATIONAL ASSISTANTS FEDERATION,  
VAN DYKE PROFESSIONAL PERSONNEL,  
WARREN WOODS FEDERATION OF  
PARAPROFESSIONALS, WASHTENAW  
INTERMEDIATE SCHOOL EMPLOYEES  
FEDERATION, WATERFORD ASSOCIATION  
OF SUPPORT PERSONNEL, WAYNE COUNTY  
COMMUNITY COLLEGE PROFESSIONAL &  
ADMINISTRATIVE ASSOCIATION, WAYNE  
COUNTY COMMUNITY COLLEGE  
FEDERATION OF TEACHERS, WAYNE  
COUNTY RESA SALARIED STAFF,  
WEXFORD-MISSAUKEE ISD FEDERATION  
OF TEACHERS, WHITEFISH TOWNSHIP  
FEDERATION OF TEACHERS,

Plaintiffs-Appellants,

and

MICHIGAN EDUCATION ASSOCIATION,

Plaintiff,

v

STATE OF MICHIGAN,

Defendant-Appellee,

and

STATE TREASURER, JOHN E. NIXON, PUBLIC  
SCHOOL EMPLOYEES RETIREMENT  
SYSTEM, PUBLIC SCHOOL EMPLOYEES  
RETIREMENT SYSTEM BOARD, PHIL  
STODDARD, DEPARTMENT OF  
TECHNOLOGY MANAGEMENT AND  
BUDGET, and TRUST FOR PUBLIC  
EMPLOYEE RETIREMENT HEALTH CARE  
FUND,

Defendants.

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No. 313960  
Court of Claims  
LC No. 12-000104-MM

Advance Sheets Version

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MICHIGAN EDUCATION ASSOCIATION,

Plaintiff-Appellant,

and

AFT MICHIGAN, AFT, AFL-CIO, ALPENA-MONTMORENCY-ALCONA ISD PARAPROFESSIONALS/TEACHERS, ARENAC EASTERN FEDERATION, BAY ARENAC SKILLS CENTER FEDERATION, BROWN CITY EMPLOYEES FEDERATION, BROWN CITY FEDERATION OF TEACHERS, CHEBOYGAN OTSEGO PRESQUE ISLE INTERMEDIATE PARAPROFESSIONALS AND BUS PERSONNEL, CHEBOYGAN OTSEGO PRESQUE ISLE ISD TEACHERS, CHEBOYGAN OTSEGO PRESQUE ISLE SUPPORT PERSONNEL, CHESANING UNION AUXILIARY SERVICE EMPLOYEES, CLARE-GLADWIN ISD FEDERATION, CRAWFORD AU SABLE BUS DRIVERS FEDERATION, CRAWFORD AU SABLE CUSTODIANS/SECRETARIAL FEDERATION, CRAWFORD AU SABLE SUPPORT STAFF FEDERATION, CRAWFORD AU SABLE FEDERATION OF TEACHERS, CRESTWOOD FEDERATION OF TEACHERS, DEARBORN FEDERATION OF SCHOOL EMPLOYEES, DEARBORN FEDERATION OF TEACHERS, DETROIT ASSOCIATION OF EDUCATIONAL OFFICE EMPLOYEES, DETROIT FEDERATION OF PARAPROFESSIONALS, DETROIT FEDERATION OF TEACHERS, EAST DETROIT FEDERATION OF TEACHERS, ECORSE FEDERATION OF TEACHERS, FAIRVIEW FEDERATION OF TEACHERS, GLEN LAKE FEDERATION OF TEACHERS, HALE FEDERATION OF TEACHERS, HAMTRAMCK FEDERATION OF TEACHERS, HEMLOCK FEDERATION OF TEACHERS, HEMLOCK AUXILIARY SERVICE EMPLOYEES, HENRY FORD COMMUNITY COLLEGE ADJUNCT FACULTY ORGANIZATION, HENRY FORD COMMUNITY COLLEGE FEDERATION OF TEACHERS, HIGHLAND PARK FEDERATION OF PARAPROFESSIONALS, HIGHLAND PARK

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FEDERATION OF TEACHERS, IMLAY CITY  
FEDERATION OF TEACHERS, INKSTER  
FEDERATION OF TEACHERS, IOSCO ISD  
INTERMEDIATE FEDERATION OF  
AUXILIARY EMPLOYEES, IOSCO  
FEDERATION OF TEACHERS, KINGSLEY  
FEDERATION OF TEACHERS, KIRTLAND  
COMMUNITY COLLEGE FEDERATION OF  
TEACHERS, LAKE CITY SUPPORT STAFF  
FEDERATION, LAKE CITY TEACHERS AND  
PARAPROFESSIONALS FEDERATION, LAKE  
SHORE FEDERATION OF EDUCATIONAL  
SECRETARIES, LAKE SHORE FEDERATION  
SUPPORT STAFF, LAKE SHORE FEDERATION  
OF TEACHERS, LAMPHERE FEDERATION OF  
PARAPROFESSIONALS, LAMPHERE  
FEDERATION OF TEACHERS, LANSING  
COMMUNITY COLLEGE ADMINISTRATIVE  
ASSOCIATION, LES CHENEAX  
FEDERATION OF SUPPORT STAFF, LES  
CHENEAX FEDERATION OF TEACHERS,  
MACOMB INTERMEDIATE FEDERATION OF  
PARAPROFESSIONALS, MACOMB  
INTERMEDIATE FEDERATION OF  
TEACHERS, MELVINDALE/NAP  
PARAPROFESSIONALS, MELVINDALE/NAP  
FEDERATION OF TEACHERS, MIDLAND  
FEDERATION OF PARAPROFESSIONALS,  
MIDLAND ISD FEDERATION OF  
PARAPROFESSIONALS, MIDLAND ISD  
FEDERATION OF TEACHERS, NORTHVILLE  
FEDERATION OF PARAPROFESSIONALS,  
ONAWAY FEDERATION OF SCHOOL  
RELATED PERSONNEL, ONAWAY  
FEDERATION OF TEACHERS, PLYMOUTH-  
CANTON COMMUNITY SCHOOLS  
SECRETARIAL UNIT, PLYMOUTH-CANTON  
FEDERATION OF PLANT ENGINEERS,  
ROMULUS FEDERATION OF  
PARAPROFESSIONALS, ROSEVILLE  
FEDERATION OF TEACHERS, RUDYARD  
FEDERATION OF AIDES, RUDYARD  
FEDERATION OF TEACHERS, SAGINAW ISD  
FEDERATION OF TEACHERS, TAWAS AREA  
FEDERATION OF TEACHERS, TAYLOR  
FEDERATION OF TEACHERS, UTICA

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FEDERATION OF TEACHERS, VAN DYKE  
EDUCATIONAL ASSISTANTS FEDERATION,  
VAN DYKE PROFESSIONAL PERSONNEL,  
WARREN WOODS FEDERATION OF  
PARAPROFESSIONALS, WASHTENAW  
INTERMEDIATE SCHOOL EMPLOYEES  
FEDERATION, WATERFORD ASSOCIATION  
OF SUPPORT PERSONNEL, WAYNE COUNTY  
COMMUNITY COLLEGE PROFESSIONAL &  
ADMINISTRATIVE ASSOCIATION, WAYNE  
COUNTY COMMUNITY COLLEGE  
FEDERATION OF TEACHERS, WAYNE  
COUNTY RESA SALARIED STAFF,  
WEXFORD-MISSAUKEE ISD FEDERATION OF  
TEACHERS, WHITEFISH TOWNSHIP  
FEDERATION OF TEACHERS,

Plaintiffs,

v

STATE OF MICHIGAN, STATE TREASURER,  
JOHN E. NIXON, PUBLIC SCHOOL  
EMPLOYEES RETIREMENT SYSTEM,  
PUBLIC SCHOOL EMPLOYEES RETIREMENT  
SYSTEM BOARD, PHIL STODDARD,  
DEPARTMENT OF TECHNOLOGY  
MANAGEMENT AND BUDGET, and TRUST  
FOR PUBLIC EMPLOYEE RETIREMENT  
HEALTH CARE FUND,

Defendants-Appellees.

No. 314065  
Court of Claims  
LC No. 12-000104-MM

Advance Sheets Version

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Before: SAAD, P.J., and K. F. KELLY and GLEICHER, JJ.

GLEICHER, J. (*concurring*).

I concur with the result reached by the majority. I write separately to clarify my reasons for doing so.

In broad outline, plaintiffs have raised constitutional challenges to two portions of 2012 PA 300. The first involves pension benefits. Pursuant to the act, members of the Michigan Public School Employees' Retirement System (MPERS) must increase their payroll deductions to maintain the 1.5% pension factor that formerly applied to all public school employee pensions. And under 2012 PA 300, MPERS members must pay an increased healthcare premium

equivalent to 3% of their compensation or instead elect to join a “Tier 2” defined contribution benefit plan.

I concur with the majority’s resolution of plaintiffs’ healthcare benefit claim. As the majority explains, the Supreme Court concluded in *Studier v Michigan Pub Sch Employees’ Retirement Bd*, 472 Mich 642; 698 NW2d 350 (2005), that public school employees have no constitutional entitlement to healthcare benefits. The *Studier* Court held, “[T]he Legislature intended for payment of health care benefits by the MPSERS under MCL 38.1391(1) to simply be a ‘fringe benefit’ to which public school employees would never have a contractual entitlement.” *Id.* at 667-668. Healthcare benefits do not even qualify as “financial” benefits protected under Const 1963, art 9 § 24, the *Studier* Court further held, because they are not in the form of “monetary payments.” *Id.* at 655. As Justice CAVANAGH articulated in dissent, the *Studier* majority found it constitutionally acceptable for our state to promise healthcare benefits to its teachers, and to break this promise at will. *Id.* at 679 (CAVANAGH, J., dissenting).

Nevertheless, in *AFT Mich v Michigan*, 297 Mich App 597, 604; 825 NW2d 595 (2012), this Court struck down on constitutional grounds a statutory modification of plaintiffs’ healthcare benefit formula. The 2010 act at issue in *AFT* required “that public school districts . . . withhold three percent of each employee’s wages and remit the amount to the MPSERS as ‘employer contributions’ to the trust that funds retiree health care benefits.” *Id.* The *AFT* Court held that the law impaired contractual rights and allowed the government to take private property without compensation. *Id.*

The Legislature made virtually no change to the language struck down in *AFT*, but added a provision—MCL 38.1391a(5)—permitting members to avoid the 3% wage withholding by joining a “Tier 2” plan. The majority reasons that “the voluntary nature of 2012 PA 300” allowing public school employees to “opt in or opt out of the legislative scheme” cured the constitutional infirmities discerned by the *AFT* Court. Plaintiffs fail to persuasively counter this logic. Plaintiff Michigan Education Association (MEA) argues that the act “impose[s] a significant contribution requirement on all MPSERS members, including those who have been members of the retirement system for many years and whose rights to retiree health premium payments have vested.” The MEA concedes, however, that *Studier* negates this argument.

On the other hand, I agree with plaintiffs that *pension* benefits are clothed with constitutional protection from impairment or diminishment. Const 1963, art 9, § 24 serves “to ensure that public pensions be treated as contractual obligations that, once earned, could not be diminished.” *In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38*, 490 Mich 295, 311; 806 NW2d 683 (2011). See also *Kosa v State Treasurer*, 408 Mich 356, 360; 292 NW2d 452 (1980) (“To gain protection of their pension rights, Michigan teachers effectively lobbied for a constitutional amendment granting contractual status to retirement benefits.”). As the Supreme Court explained in *Advisory Opinion re Constitutionality of 1972 PA 258*, 389 Mich 659, 662-663; 209 NW2d 200 (1973), “it was the intention of the framers of the constitution” to make the accrued financial benefits of public pensions “contractual rights.”

Plaintiffs contend that the enforceable contract includes the 1.5% multiplier formula in effect by statute since 1945. However, no evidence supports that 2012 PA 300 impairs or reduces the benefits earned pursuant to the 1.5% multiplier that accrued before 2012 PA 300

took effect. Further, in *Advisory Opinion re Constitutionality of 1972 PA 258*, 389 Mich at 663, the Supreme Court observed that under Const 1963, art 9, § 24, “the Legislature cannot diminish or impair accrued financial benefits, *but we think it may properly attach new conditions for earning financial benefits which have not yet accrued.*” (Emphasis added.) Plaintiffs have failed to distinguish this language from the case at bar. Although plaintiffs have pointed to caselaw from other jurisdictions that reached a result contrary to the majority opinion, in most of those cases the courts found that statutory language created binding contracts. To date, our Supreme Court has not found any binding contractual obligations residing within legislative enactments. To the contrary, in *Studier*, 472 Mich at 661, the Supreme Court emphasized “the strong presumption that statutes do not create contractual rights.”

Finally, plaintiffs contend that 2012 PA 300 violates the second sentence of art 9, § 24, which states, “Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities.” MEA’s brief contends that the act “uses current service contributions levied against the members to finance the unfunded accrued liabilities of MPSERS, *i.e.*, \$15.6 billion of the State’s unfunded accrued liability that accrued to MPSERS members in the past.”<sup>1</sup> According to plaintiffs, 2012 PA 300 “is an attempt to make the members of MPSERS pay for a large portion of the pension benefits which had already accrued to them prior to” the act’s passage.

The record neither supports nor refutes that at the time 2012 PA 300 was enacted, the MPSERS balance sheet included “unfunded accrued liabilities” that will be paid through a mechanism created by the act. Nor does the record demonstrate whether the Legislature, or MPSERS, has applied current member contributions against unfunded accrued liabilities. If 2012 PA 300 has resulted in the collection of money used to meet pre-2012 unfunded accrued liabilities through a “borrowing scheme” similar to that condemned in *Kosa*, 408 Mich 356, I would agree that *as applied*, the act raises constitutional concerns. In my view, this issue should be addressed with the benefit of a full evidentiary record in a different case. Because the evidence necessary to evaluate this issue is not before this Court, I concur with the majority that based on the challenges raised here, 2012 PA 300 passes constitutional muster.

/s/ Elizabeth L. Gleicher

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<sup>1</sup> Earlier in the same brief, the MEA proclaims: “There is no financial crisis regarding MPSERS. It is and has been paying for all pension benefits that come due. The Michigan Legislature has never declared that there was a financial crisis regarding MPSERS. MPSERS has sufficient money to meet its financial commitments to its retirees.”